COM/1-86-011-AK

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of State Farm Mutual Automobile Insurance Company and Allstate Insurance Company.	FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDATION AND MEMORANDUM

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on October 8 and 9, 1985, in Room 112, State Capitol Building, St. Paul, Minnesota.

Appearing for State Farm Mutual Automobile insurance Company (hereinafter "State Farm") was James B. Loken, of the firm of Faegre & Benson, Attorneys at Law, 2300 Multifoods Tower, 33 South 6th Street, Minneapolis, Minnesota 55402. Appearing on behalf of Allstate Insurance Company (hereinafter "Allstate") and American Family Mutual Insurance Company, Federated Mutual Insurance Company, Government Employee Insurance Company, Grinell Mutual Reinsurance Company, Mutual Service Casualty Insurance Company, Western National Mutual Insurance Company, American Hardware Mutual Insurance Company and TriState Insurance Company of Minnesota were Joe A. Walters and Lawrence A. Moloney, of the firm of O'Connor & Hannan, 3800 IDS Tower, 80 South 8th Street, Minneapolis, Minnesota 55402. Appearing on behalf of the Minnesota Trial Lawyers Association was William R. Sieben, of the firm of Schwebel, Goetz, Sieben & Hanson, P.A., Attorneys at Law, 5120 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402. Appearing on behalf of the Minnesota Department of Commerce (hereinafter the "Department") was Special Assistant Attorney General Gregory P. Huwe, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101.

The record in this matter closed on November 20, 1985.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this

Report, if any, shall be filed with the Commissioner of Commerce, Michael A.
Hatch, 500 Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101.

STATEMENT OF ISSUES

During both the 1985 Regular Session and the 1985 First Special Session of the Minnesota State Legislature, amendments were enacted to Minnesota Statutes Chapter 65B, the Minnesota No-fault Automobile Insurance Act. One of these amendments directly contradicted others, while another was worded

ambiguously. The general purpose of this proceeding was to resolve two questions concerning the law as amended. Specifically:

1. Are insurance carriers allowed to combine uninsured and underinsured motorist protection into a single coverage?

2. Are insurance carriers required to offer their insureds the opportunity to elect a "stacking" option for uninsured and underinsured motorist coverage, or is such "stacking" prohibited by law?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History

1. On July 11, 1985, following the passage of a number of amendments to the No-fault Act, State Farm filed its policy forms regarding uninsured and underinsured motor vehicle coverage with the Department of Commerce, Insurance Division, pursuant to Minn. Stat. 70A.06, subd. 2 (1984) Ex. 10. This filing included the newly mandated underinsured motorist coverage, but combined it with uninsured motorist coverage into a single coverage. In addition, it provided no option for stacking.

2. On August 6, the Commissioner of Commerce issued Bulletin 85-4, containing his interpretations of the various legislative enactments. Ex. 3 In the Bulletin, the Commissioner alleges that some provisions of the legislative enactments are contradictory and the state of the law is uncertain. However, because many carriers had inquired as to the proper interpretation of the enactments, the Bulletin sets forth the Commissioner's position regarding them.

The Commissioner concluded that uninsured motorist coverage must be separate from underinsured motorist coverage and informed carriers that he would not approve any form that combined the two into a single coverage. Secondly, the Bulletin directs carriers to make their own decisions as to the effect of the amendments on an insurer's obligation to notify policyholders that they have the right to elect to stack uninsured motorist and underinsured motorist coverages.

3. One of the reasons that the Department took these positions was to create a justiciable issue so that the admittedly conflicting amendments could be reconciled promptly. Tr. 28.

4. On August 14, 1985, the Department rejected State Farm's filing because it did not provide separate uninsured and underinsured motorist protection, and because it did not offer the policyholder :he option to elect to "stack" these coverages. Ex. 11.

5. On August 29, 1985, State Farm submitted a revised filing to comply with the Commissioner's interpretation. For reasons unrelated to the two issues in this proceeding, State Farm subsequently filed yet another form on September 5, 1985, which was approved by the Commissioner. Ex. 12. It

provided for separate uninsured and underinsured coverages, as well as including an offer to policyholders to elect to "stack" policies.

6. On September 11, 1985, State Farm filed a request for a hearing pursuant to Minn. Stat. 70A.22, subd. 1 (1984).

7. On September 17, 1985, the Commissioner issued a Notice of and Order for Hearing, Order to Show Cause and Statement of Charges. Ex. 1.

8. The same issues arose in connection with the filings of Allstate. The Commissioner issued an Order for Hearing, Order to Show Cause, and Statement of Charges on September 17, 1985. This was filed with the Office of Administrative Hearings on September 25, accompanied by a request that the State Farm and Allstate hearings be consolidated.

9. On September 25, 1985, a similar request for consolidation was received from counsel for Allstate and six other intervening insurance companies.

10. On September 27, 1985, Administrative Law judge Jon Lunde issued an Order, pursuant to Minn. Rule 1400.6350, subp. 6, consolidating the Allstate and State Farm matters into a single case.

11. Prior to the start of the hearing, Petitions to itervene were received from eight other insurance companies noted above (all represented by Messrs. Walters and Moloney) and from the Minnesota Trial Lawyers Association (represented by Mr. Sieben).

12. On October 7, 1985, the undersigned Administrative Law Judge issued an Order granting intervention to the eight insurance companies.

13. On October 8, 1985, at the start of the hearing, the undersigned Administrative Law Judge granted intervention to the Minnesota Trial Lawyers Association. Tr. 9.

Status of the Law Prior to 1985 Sessions

14. Between 1973 and the start of the 1985 Regular Legislative Session, a substantial body of case law had developed over the question of whether an insured under more than one policy could recover (or "stack") under the coverage provisions of each policy, up to the extent of actual loss. Van Tassel v. Horace Mann Mutual Insurance Company, 207 N.W.2d 348 (Minn. 1973). One of the reasons for this was the absence of any statutory provision prohibiting such stacking. Wasche v. Milbank Mutual Insurance Company, 268 N.W.2d 913, 917-919 (Minn. 1978).

15. In February of 1983, the Insurance Division of the Department of Commerce issued a study entitled "Automobile Insurance in Minnesota: Affordability and Other Issues" (Ex. 34). This study suggested that stacking developed as an issue "primarily because of the ambiguity present in the state law denoting responsibility for the payment of benefits." Id., p.v.

16. Stacking can be generally defined as the adding together of the insurance coverage for two or more motor vehicles to determine the amount of coverage available to an insured person for any one accident. Tr. 83-84.

Overview of 1985 Sessions

17. During the 1985 Regular and Special Sessions, four bills were enacted, each of which contained amendments to Minn. Stat. sec. 65B.49. The following table shows the chronology of the passage and enactment of the four separate bills in question:

1985 Minn. Laws	Passed -House	Passed Senate	Signed by Governor
Ch. 168 (H.F.345)	May 13, 1985	May 9, 1985	May 21, 1985
Ch. 309 (H.F.265)	May 20, 1985	May 20, 1985	June 7, 1985
1 Spec. Sess. Ch. 10 (S.F.24), "Semi-States"	June 20, 1985	June 20, 1985	June 27, 1985
1 Spec. Sess. Ch. 13 (H.F.16) "State Depts."	June 20, 1985	June 21, 1985	June 27, 1985
	(signed after Ch. 10)		

18. The first three of the above-listed enactments included so-called "anti-stacking" provisions, which prohibit the stacking of uninsured and underinsured coverages. For example, Ch. 168, 11 amends Minn. Stat. 658.49, subd. 4 (1984) to include the following language:

> (6) Regardless of the number of policies involved, vehicles involved, persons covered, claims made, vehicles or premiums shown on the policies, or premiums paid, in no event shall the limit of liability for uninsured and underinsured motorist coverages for two or more motor vehicles be added together to determine the limit of insurance coverage available to an injured person for any one accident.

Exactly the same language is included in Ch. 309, 5, and -- with a technical difference which will be discussed below -- in Special Session Ch. 10 (the "Semi-States" bill), at 68. However, Special Session Ch. 13 at 191, proported to amend the same subdivision to read as follows:

> Unless a policyholder makes a specific election to have two or more policies added together, the limit of liability for

uninsured and underinsured motorist coverages for two or more motor vehicles may not be added together to determine the limit of insurance coverage available to an injured person for any one accident. An insurer shall notify policyholders that they may elect to have two or more policies added together. (Emphasis added).

The first provision quoted above was generally referred to as the "anti-stacking" language, while the second provision contains the concepts which mere labeled "optional stacking" and "mandatory offer", which were generally referred to together as the "pro-stacking" language.

19. With regard to the other issue in this proceeding, the "single coverage" issue, there is no question about which statutory language governs.
The language used was the same in all cases. The only question is the proper
interpretation of that language. The language at issue provides as follows:

> No plan of reparation security may be..... issued for delivery..... in this state..... unless uninsured and underinsured motorist coverages are provided therein. The coverages combined, at a minimum, must provide limits of . . . . For purposes of this subdivision, uninsured motorist coverage and underinsured motorist coverage shall be a single coverage.

1985 Regular Session

20. During the 1985 Regular Session, two bills were enacted amending Minn. Stat. 65B.49. The first amendment was enacted as Ch. 168, originally
labeled H.F.345. Ex. 27. The second amendment appeared in Ch. 309, originally labeled H.F.265. Ex. 28.

21. A non-controversial (at least for purposes of this proceeding) result
of these two amendments is that underinsured motorist coverage is now mandatory in Minnesota. Prior to their enactment, no statute existed in Minnesota detailing an insurer's obligations for providing underinsured motorist insurance benefits.

Chapter 168

22. Ch. 168 originated as House File 345. It's chief author was Representative Arthur Seaberg. It's sole focus was amendments to the no-fault
law. In its original form, it mandated underinsured motorist coverage and provided that an insured could not stack benefits under the uninsured and underinsured motorist coverages. In addition, the bill also prohibited stacking of benefits for personal injury protection (basic economic loss). The bill also made a number of other changes to the no-fault law which are not
at issue here. Tr. 82-83.

23. Procedurally, House File 345 was sent to the House Financial Institutions and Insurance Committee. At this point, the bill contained "anti-stacking" provisions for both personal injury protection benefits and for benefits from uninsured and underinsured motorist coverages. Committee hearings on this bill began on March 6, 1985. Considerable committee discussion on the issue of stacking took place, but the amendments advocating
stacking (which would have deleted the original anti-stacking language) were defeated in the Committee. Tr. 85-87.

24. On March 13, 1985, the bill passed the Financial Institutions and Insurance Committee and on the next day, March 14, the bill was debated on the
House Floor.

25. During debate on the House Floor, several amendments were proposed by Representative Seaberg in response to memo sent to him from Stan Jacobsen, a Legislative Analyst (Ex. 32). These were technical amendments that did not change the substance of the bill and, after consideration on the House Floor, the amendments were adopted. Some amendments to eliminate the anti-stacking provisions were offered on the Floor, but were defeated. Tr. 88. Ultimately, the bill passed the House with the anti-stacking provisions intact for both basic economic loss benefits and uninsured and underinsured motorist benefits.

26. After passing the House, H.F.345 was referred to the Senate, where it was assigned to the Economic Development and Commerce Committee. In the Senate Committee, two issues became primary topics for debate; the stacking issue and the method of calculating the newly mandated underinsured motorist coverage. Several amendments were offered, but none were adopted, and H.F.345 was forwarded to the Senate Floor unchanged.

27. During debate on the Senate Floor, several amendments were offered. Senator Gen Olson offered a pro-stacking amendment which would have given the policyholder an option to purchase a policy which would permit stacking of personal injury protection benefits, but the language of the amendment did not require insurers to offer that option in the policy. This amendment was limited to the subject of personal injury protection. It was adopted. However, upon a final vote, the bill failed to pass. Tr. 130-131.

28. The next day, the bill was again brought up in the Senate and again debated. Senator Donna Peterson introduced an amendment, limited to the subject of personal injury protection, which provided that not only would the policyholder be able to obtain a policy that permitted stacking, but that the insurer would be required to make the offer of that type of a policy to the insured. The rationale for this amendment was that an option would do no good if the policyholder was not notified of it. Tr. 272. This amendment superseded the Olson amendment. It was adopted. There followed another hour of debate on the issue of stacking, and then on the final vote on the bill, the bill passed. Tr. 135-138.

29. As passed by the Senate, the bill contained the Peterson amendment permitting stacking and the mandatory offer, but these related only to personal injury protection benefits. They did not relate to uninsured and underinsured coverages. The bill did contain an anti-stacking provision relating to those two coverages, which remained intact upon Senate passage.

30. After passing the Senate, the bill went back to the House where the House author elected to concur with the Senate version as a compromise, rather

than to propose a conference committee. Tr. 91 and 118. The Senate version of the bill re-passed the House on May 13.

31. On May 17, Thomas O'Malley, Assistant Commissioner of the Department of Commerce, sent an inter-office memo to Reynaud Harp, Deputy Commissioner of the Department. Ex. 9. The memo suggested that there were serious technical problems with the bill and that if it became law in its present form, it would be the cause of much litigation. The memo suggested that returning to the concept of a mandatory offer (it had been the law prior to 1980) would result in litigation. It expressed uncertainty about the technical application of the anti-stacking provision with regard to uninsured motorist and underinsured

motorist coverages. Finally, the memo pointed out that the proposed effective date (July 1 , 1985) was totally inadequate, and that at a minimum, the effective date should be moved back to January 1, 1986.

32. Since the bill had passed the Senate and the House in the same version, it was then sent to the Governor for signature. Soon thereafter, Senator Petty (the chief Senate sponsor of the bill) learned that the Governor had been visited by Commissioner Hatch and Harry Sieben, both of whom had urged him to veto the bill. Senator Petty then met with the Governor, the Lieutenant Governor, and Tom Triplett, and discussed the philosophy of stacking at some length. Senator Petty was informed that Commissioner Hatch had indicated to the Governor that there were technical problems with the bill and that the Governor had been provided with a copy of the O'Malley memorandum. Senator Petty requested, and received, a copy of the O'Malley memorandum, and over the next few days, reviewed the problems it raised. Senator Petty then requested Senate Counsel to draft an amendment to correct some of the technical problems. Tr. 135-138.

33. At some point before the Governor signed the bill (which he ultimately did on May 21), but before the Legislature adjourned the Regular Session, Senator Petty learned that Commissioner Hatch was appearing before the Semi-States Conference Committee asking for it to adopt a number of amendments to the No-fault bill in its report. Senator Petty was concerned that the list of amendments might include some substantive amendments, rather than merely technical ones, and so he located Commissioner Hatch and expressed his concern that amendments not to be made to the bill without first discussing them with him. The two went over the various proposed amendments, but before any final agreement could be reached between them, the Semi-States Conference Committee adjourned because it became apparent that it (and other conference committees) would not be able to finish their work by the end of the Regular Session. Tr. 138-140.

Chapter 309

34. On the last day of the Regular Session, Senator Petty took the correcting amendment drafted by Senate Counsel (in response to the O'Malley memorandum) to Senator Bill Luther and asked him to insert it into S.F.265. S.F.265 was a bill Senator Luther was carrying which dealt primarily with dram-shop actions. Senator Luther consented to Senator Petty's request to add the technical no-fault corrections to the dram-shop bill.

35. The final version of the no-fault provisions contained in the dram-shop bill had the identical language prohibiting stacking of uninsured and underinsured motorist coverages as had already been passed in H. F. 345,

the no-fault bill. It also repeated the language requiring uninsured and underinsured motorist coverages to be a single policy.

36. The dram-shop bill passed both the House and the Senate on the last day of the Regular Session, May 20, 1985, and was signed into law by the Governor on June 7, 1985.

1985 Special Legislative Session

37. The Special Legislative Session was called for the purpose of passing
essential legislation (major tax and appropriations bills) which had not been

passed during the Regular Session. It was agreed among the leaders of the legislature and the Governor that efforts would be made to bring about the resolution of the critical matters in the shortest time possible and, to that end, a special agenda and procedure were implemented. This agreement between leaders of both caucuses of both Houses and the Governor prohibited amendment of appropriations bills during Special Session floor debate. However, the bills could still be amended while they were in conference, but only if a majority of the House conferees and a majority of the Senate conferees agreed to any change.

38. The agreement also provided that the Regular Session's conference committees were to continue to meet after the end of the Regular Session for the purpose of drafting the major bills to be passed at the Special Session. The Committee Reports would be afforded the status of new bills and introduced as such during the Special Session. To expedite the process, the major tax and appropriations bills remaining after the end of the Regular Session would be split between the House and the Senate and considered simultaneously. According to the procedural agreement, no further committee referrals were allowed. Perhaps most importantly, there would be no floor amendments allowed, regardless of the merits. Tr. 198-200.

Special Session: State Departments Bill

39. One of the six major bills remaining for passage during the Special Session was the "State Departments" appropriations bill. This dealt with the organization and funding of several agencies, the Legislature and the courts.

40. On May 29, before the start of the Special Session, Senator Donna Peterson sent a letter (Ex. 39) to Senator Carl Kroening, who was a member of the State Departments Conference Committee. In this letter, Senator Peterson asked Senator Kroening to consider adding an amendment to :he State Departments bill regarding stacking of insurance benefits. She stated that because the amendment which she had made to the No-fault bill (H.F.345 -- which became Ch. 168) was hastily drafted, it applied only to personal injury protection benefits. If she had had more time to draft her amendment, she would have offered language to make it clear that the mandatory offer (and thus the optional stacking provisions) apply to all first-party coverage, including uninsured and underinsured motorist coverages. She attached the proposed language to her letter. See, generally, Tr. 263-269.

41. Senator Kroening, in conjunction with Representative David Bishop, complied with Senator Peterson's request, and inserted an amendment into the State Departments bill. This amendment ultimately passed with the State Departments bill, which became First Special Session Ch. 13. The amendment is contained in section 191 of the Chapter and it amends Minn, Stat. section

65B.49, subd. 4, as amended by Chapter 168. It is entitled "Uninsured and Underinsured Motorist Coverages" and reads, in pertinent part, as follows:

> (1) . . . For purposes of this subdivision, uninsured motorist coverage and underinsured motorist coverage shall be a single coverage.

> (6) Unless a policyholder makes a specific election to have two or more policies added together. the limit of liability for uninsured and underinsured coverages for two or more motor vehicles may not be added together to determine the limit of insurance coverage available to an injured person for any one accident. An insurer shall notify policyholders that they may elect to have two or more policies added together.

42. Representative Seaberg, the author of H.F.345 and Senator Petty, the Chief Senate spokesperson for H.F.345, were never consulted about this addition to the State Departments report.

43. When it was learned that the State Departments bill had been amended to contain a mandatory offer for stacking of uninsured and underinsured motorist coverage, opponents of this change approached the conferees and asked them to remove it, but they failed. Realizing that there would be no opportunity for floor amendment, and therefore no other way to remove the language, it was decided to attempt to add language to another bill, the Semi-States appropriations bill, in an attempt to "undo" the pro-stacking provision which had been added to the State Departments bill. Tr. 100-104; 166-167; 193-194.

Special Session: The Semi-States Bill

44. Another of the major appropriations bills which had not been enacted during the Regular Session was the Semi-States appropriations bill. This bill deals with monies for the Department of Transportation and other agencies (including the Department of Commerce), as well as various "policy" matters.

45. The original author of H.F.345, Representative Arthur Seaberg, was a member of the Semi-States Conference Committee. During conference deliberations after the Regular Session had ended, he was contacted by various persons regarding further amendments to the No-fault law. There was concern that the technical problems highlighted in the O'Malley memorandum had not been completed enveloped by Senator Petty's no-fault amendments to the dram-shop bill, which had been passed during the Regular Session as Chapter 309. Specifically, three technical problems remained: (1) changing the effective date of the bill to provide adequate time for implementation of the substantive changes contained in Chapter 168; (2) revising a definition; and (3) precluding recovery for uninsured or underinsured insurance coverage until a judgment is entered against the at-fault party. Representative Seaberg had amendments drafted addressing these problems and surveyed the interested parties as to whether they were all in agreement with their form. Hearing no

opposition, he then inserted the technical amendments into the Semi-States bill.

46. Representative Seaberg later learned of the pro-stacking change to the no-fault law made by the State Departments conferees. He was upset and attempted to devise a process and a method whereby he could attempt to undo what the State Departments conferees had done. He talked to the Revisor of Statutes Office seeking advice on how to best nullify the provision contained in the State Departments bill. Tr. 100-104.

47. The Revisor of Statutes Office is commonly used as a source of information and drafting as a service to all legislators. The Revisor's office is charged with giving all members of the Legislature advice concerning the legal effect of bills or proposed bills upon request. Minn. Stat. Section 3C.04, subd. 1. The fact that the Revisor drafts language at the request of a legislator does not mean that the Revisor, or any person in the office, either supports or opposes the language. Tr. 104.

48. The Revisor's Office responded to Representative Seaberg's request by drafting two separate sections as amendments to the Semi-States bill. Ex. 33. The first amendment added section 68 to the bill. This new section contained anti-stacking language identical to the language earlier passed during the Regular Session in Ch. 168, section 11, but with one major change. Instead of amending section 65B.49, subd. 4, it added the anti-stacking language as a new subdivision 3a of section 65B.49.

49. The second amendment added to section 123, subd. 5 of the Semi-States bill, and it had two elements. The first element repealed subdivision 4 of section 65B.49, the subdivision which the State Departments bill purported to amend. The second element of the amendment purported to void any further amendments to subdivision 4 at the same Special Session. As proposed by the Revisor, section 123, subd. 5 of the Semi-States bill would read as follows:

> Minnesota Statutes 1984, section 65B.49, subd. 4, as amended by laws 1985, Chapter 168, section 11 and Chapter 309, section 5, is repealed.
>
> Any amendment to Minnesota Statutes, section 65B.49, subd. 4, enacted at the same Special Session that enacts this subdivision, is void.

In sum, therefore, the Revisor's language repealed subdivision 4 as amended at the close of the Regular Session; then reenacted the same language as the new subdivision 3a: and finally attempted to void any other amendments to subdivision 4 in the Special Session. It was clearly an attempt to preclude the effective enactment of the pro-stacking language in the State Departments bill.

50. The preparation of this responsive amendment came very close to the completion of final draft of the Semi-States bill. In order to get the

amendment adopted by the Semi-States conference committee, Representative Seaberg had to get three votes from House conferees and three votes from Senate conferees. Representative Seaberg was able to get the three House votes with little problem, but he did have problems getting three Senate conferees to agree to the amendment. Tr. 104. He discussed his problem with Senator Keith Langseth, the leader of the Senate Conferees, and was told by Senator Langseth that the matter would have to be taken up before the full Senate DFL Caucus. Id. See also Tr. 155-156.

51. On the morning of the day that the Special Session began, the Senate DFL (majority) caucus began what turned out to be almost a full -day meeting. The purpose of the caucus meeting was to review all the significant legislation that would be coming before the Special Session and attempt to iron-out any controversy within the caucus. Senator Langseth, the Co-Chair of

the Semi-States Conference Committee, brought two sets of bill jackets to the caucus meeting. The only difference between the two was that one contained language that would nullify the State Departments amendment (the Revisor's proposed sections 68 and 123, subd. 5 quoted above) while the other did not. Senator Petty explained the "problem" caused by the State Departments amendment, and several Senators spoke on each side of the issue of whether or not to add the Revisor's language to the Semi-States bill in order to nullify the effect of the State Departments amendment. After about 30 or 40 minutes of debate, a vote was taken and it was decided to have the Revisor's language added to the Semi-States report. See, generally, Tr. 154-160.

52. Immediately prior to the start of the Special Session, the House Independent-Republican (majority) caucus also met to discuss the various bills coming before the Special Session. Representative David Bishop was one of the House conferees on the State Departments Conference Committee who had been instrumental in inserting the pro-stacking amendment into the State Departments report. Soon after that amendment had been inserted, Speaker Jennings and others had convinced Representative Bishop that it was unwise, and Bishop had "realized the error of his ways." Tr. 196. Bishop had, in fact, cooperated with Representative Seaberg in inserting the Revisor's "undoing" language into the Semi-States bill. At the time of the House IR caucus immediately prior to the Special Session, Speaker Jennings made a special effort to discuss the conflicting stacking provisions in both bills so the members would understand how they came about. Both Representative Bishop and Representative Seaberg participated in the explanation, both speaking on the same side of the whole issue. Representative Seaberg explained to the caucus members that he believed the impact of the Revisor's language would be to void the amendment in the State Departments bill. Tr. 110 and 195-198.

53. As finally adopted by the Semi-States Conference Committee the report contained several no-fault provisions. The bulk of those provisions were technical, non-controversial amendments to the statute. However, two provisions relating to no-fault in the Semi-States bill, SEctions 68 and 123, subd. 5, were added specifically in response to and with the intent of nullifying the pro-stacking provisions contained in the State Departments bill. Tr. 100-104; 166-167; 193-194.

54. During the Special Session, Representative Seaberg was approached by Representative Bishop. Representative Bishop offerred to try to have the pro-stacking language amended out of the State Departments bill. Representative Seaberg went over to the Senate to discuss this offer with Senator Petty. Senator Petty suggested that Seaberg decline the offer because

Petty felt the matter had been taken care of by the Revisor's language in the Semi-States bill. Tr. 168.

55. Minutes later, Senator Petty was approached by Senator Kroening with a similar offer. Senator Petty told Senator Kroening that he appreciated the offer, but felt it would not be necessary. Tr. 169.

56. During the Special Session, the Semi-States bill originated in the Senate (as S.F.24) and the State Departments bill originated in the House (as H.F.16). The Semi-States bill was voted on and passed first by both Houses. The State Departments bill dealt with more controversial topics and was, therefore, considered last. The order of passage, at least in the House, was

determined by the Speaker based upon overriding considerations that had nothing to do with stacking. Tr. 202-203.

57. The Semi-States bill (Special Session Ch. 10) passed both the House and Senate on June 20, 1985, while the State Departments bill (Special Session Chapter 13) passed the House on June 20 and the Senate on June 21. Ex. 24 and 25.

58. All four bills, Ch. 168 and Ch. 309 of the Regular Session, and Ch. 10 and Ch. 13 of the Special Session, contained identical language regarding the combination of uninsured motorist and uninsured motorist coverage into a single policy: "For purposes of this subdivision, uninsured motorist coverage and underinsured motorist coverage shall be a single coverage."

Order of Governor's Signature and Numbering by the Secretary of State

59. The normal procedure following passage of a bill by both Houses of the Legislature is for the bill to go to the Revisor's Office, where it is reviewed. A copy of the bill is also given to the State Planning Agency, which coordinates various activities of the Executive Branch in connection with legislation. Normally, the State Planning Agency sends the copy obtained from the Revisor to appropriate state agencies, who review the bill and make recommendations. After the state agencies have reviewed the bill, the State Planning Agency picks up the actual covered, jacketed bill from the Revisor and brings it to the Governor. Tr. 245. After the Governor has signed the bill, it is also the responsibility of the State Planning Agency to deliver the signed bill to the Office of the Secretary of State, where it is filed and given a chapter number. Id.

60. In the case of the Semi-States and State Departments Special Session bills, the various functions of the State Planning Agency relating to bill signing and delivery were not left to random chance. Instead, various personnel of the State Planning Agency recommended to the Governor that the State Departments appropriation bill be signed after the Semi-States bill, and that the Secretary of State assign chapter numbers to them in that order (Semi-States first, State Departments second).

61. Personnel of the State Planning Agency spoke with personnel of the Department of Commerce, and determined that the Department favored the State Departments language on stacking (policyholder may elect to stack; mandatory offer required) of uninsured and underinsured motorist coverages, as opposed

to the anti-stacking language in the Semi-States bill. Tr. 238-239; Ex. 38.
A memo from Edward Hunter of the State Planning Agency suggested that the Governor could avoid the appearance of supporting one position or the other by
signing the bills in the "natural order" which they were passed (Semi-States
first and State Departments second). Ex. 38.

62. On June 27, 1985, both bills were presented to the Governor for signing. They were presented to him in the order recommended by the State Planning Agency. The Semi-States bill was signed first, and either immediately thereafter or after a short pause for interruptions, the State Departments bill was signed second. Tr. 282-285.

63. On the same date, the two signed bills were then taken to the Secretary of State's Office, with a recommendation from the State Planning Agency that they be assigned chapter numbers in the same order, i.e. Semi-States first, State Departments second. Tr. 251, 254, 257-259. The Secretary of State assigned the Semi-States bill the number Ch. 10, and the State Departments bill was assigned Ch. 13. Ex. 21-23.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Department gave proper notice of the hearing in this matter and has complied with all other relevant substantive and procedural requirements of law or rule. The Department and the Administrative Law Judge have jurisdiction herein.

2. The "pro-stacking" provisions of Special Session Ch. 13 are irreconcilable with the "anti-stacking" provisions of Special Session Ch. 10. The two cannot be harmonized.

3. The effective statute governing the filing requirements for insurers regarding the stacking of uninsured and underinsured motorist insurance coverage in the State of Minnesota is that found in 1985 First Spec. Sess. Laws. Ch. 10, section 68, which amends Minn. Stat. 1984, section 65B.49 by adding a subdivision labeled subdivision 3a.

4. Uninsured motorist coverage and underinsured motorist coverage shall be a single coverage, and not separate coverages.

5. The attached Memorandum is included herein.

Based upon the foregoing Conclusions at Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce allow insurers to file insurance policies combining uninsured and underinsured motorist coverages into a single policy and not containing any optional stacking nor any offer to policyholders to stack these coverages.

Dated this 20th day of December, 1985.

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

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MEMORANDUM

Despite the skilled efforts of all counsel to present their evidence and arguments in a simple and straightforward manner, this record contains a confusing multitude of facts concerning a variety of complex proposals to alter the state's No-fault insurance law. Nonetheless, it is possible to sort out all the evidence and gain a relatively simple view of what happened during the 1985 Regular and Special Sessions.

STACKING

At least with regard to the dispute between the anti-stacking Legislators and the pro-stacking Legislators, it becomes apparent that advocates of two competing views utilized the legislative process in an attempt to cause their positions to become law. Had the Special Session not been restricted by the agreement to prohibit floor amendments and limit the number of bills to be considered, the conflict between the pro-stacking and anti-stacking forces likely would have been resolved more clearly. It is only because of that agreement and its limitations that the conflicting statutory provisions were both enacted.

The ultimate purpose of this proceeding is to determine legislative intent which is the controlling factor here. While there are two fairly complex issues involving legislative mechanics which must be resolved (the "Order of Passage" rule and the rule against "Prospective Repealers"), this opinion has been guided by the overriding and central proposition that the object of all interpretation and construction of laws is to ascertain and effectuate the intention of the Legislature. Minn. Stat. 645.16. It is this overriding

concept which governs in applying the two rules which will be discussed in some detail below.

A. The Order of Enactment Rule Should_Not Apply

Normally, Minn. Stat. 645.26 governs the outcome of irreconcilable provisions passed during the same session by giving effect to the law latest in date of final enactment. However, mechanical application of this rule to the facts of this case should not occur for several reasons.

Perhaps most convincing of all is the fact that the language added to the Semi-States bill was added in clear response to the State Departments pro-stacking amendment. It will be recalled that in order to add the Revisor's "undoing" language to the Semi-States bill, Representative Seaberg had to obtain the concurrence of a majority of the House Conferees and a majority of the Senate Conferees. By that time, Representative Bishop had been convinced that he had done the wrong thing in adding the pro-stacking language to the State Departments bill, and there was no problem in getting three House members on the Semi-States conference to agree to adding the .undoing" language. There was a problem, however, in getting three Senate Conferees to agree to it. The matter was taken to the entire Senate DFL caucus, where caucus members were fully informed, before voting, of the reasons for the "undoing" language and even heard a repeat debate of the pros and cons of stacking. The matter was also clearly explained to the House IR caucus by both Representatives Bishop and Seaberg. There is simply no question but that both majority caucuses were told why the Revisor's language was being added to the Semi-States bill: that it was an attempt to undo what had been done in the State Departments bill. These caucus actions likely precipitated the last-minute offers of Senator Kroening and Representative Bishop to take the pro-stacking language out of the State Departments bill. Their offers were declined because Senator Petty believed the Revisor's language took care of the problem.

From the foregoing, it is clear that the legislative intent, as of the start of the Special Session, was to prohibit stacking Of uninsured and underinsured motorist coverages. The language added to the State Departments bill contravenes this intent and, even though it was the latest law enacted, it should not be given effect. Rigid adherence to the mechanical "last enacted" rule, is inappropriate based on these facts.

Justification for not following the "last enacted" rule comes from the 1954 decision of the Minnesota Supreme Court in Allen v. Holm, 66 N.W.2d 610. In that case, a majority of the Supreme Court held that a nominating petition for a candidate for the U.S. Senate had been timely filed under a statute, despite the fact that the filing came one day later than the time limit contained in another, recently amended, statute. Of particular interest is language added to the majority opinion following receipt of a dissent.

The dissenter, Justice Thomas Gallagher, pointed out that:

> . . . under the well-established principle that the court will give effect to the latest of two inconsistent statutes relating to the same subject matter, any inconsistency must be resolved in favor or the language . . adopted at the 1951 legislative session. [citations omitted].

The majority responded as follows:

> Since the writing of this opinion the dissent of Pr. Justice Thomas Gallagher has appeared. We agree with the

canon of statutory construction announced in his opinion to the effect that the latest of two inconsistent statutes controls. But such rules are merely an aid to the construction of the statutes and must yield where, as we feel in this case, the legislative intent can be clearly

ascertained. As we stated in the case of Winters v. City of Duluth, 82 Minn. 127, 129, 84 N.W. 788, 789:

> . . . But 'canons of construction are not the masters of the courts, but merely their servants, to aid them in ascertaining the legislative intent'; and when it is ascertained the statute must be so construed as to give effect to such intention, even if it seems contrary to such rules and the strict letter of the statute."

66 N.W.2d 610, 614-615.

B. Prospective Repealer is Not Invalid

As a general rule, prospective repealers binding the power of future Legislatures to act, are invalid. Wencke v. Citv of Indianapolis, 249 N.E.2d 295 (Ind.App. 1981); Atlas v. Wayne County, 281 Mich. 596, 275 N.W.2d 507 (1937). However, the rule is almost always stated in reference to binding the acts of subsequent Legislatures in recognition of the need for legislative bodies to be free to adapt to changes in social policies.

Strict application of this rule is not always followed, and it is not unheard of for a Legislature to take preventative measures in order to protect a particular piece of legislation. Of particular importance to this proceeding is the decision in State of Connecticut v. Schwiker, 684 F.2d 979 (D.C. Cir. 1982), because it involves an attempt to avoid a mechanical application of the rule against propospective repealers in circumstances that are quite similar to those here.

Although that case involves a legislative history which was far more complex than this one, stated briefly, the House and Senate had passed conflicting versions of a HEW appropriations bill for fiscal year 1980. The proposals went to a conference committee, which began working on a compromise. The compromise, however, was never adopted by the Senate and so, in order to keep funds flowing to the Department, Congress passed a continuing appropriations resolution which funded such amounts as were necessary to continue operations ". . . to the extent and in the manner provide for in such act [referring to the bill passed earlier] as is adopted by the House. In other words, restrictions contained in the House version of the bill still pending in conference were to be applicable to monies spent pursuant to the continuing appropriations resolution.

While the conference compromise was still pending passage, Congress adopted a completely different measure which was signed by the President. This second measure contained a limitation which conflicted with a limitation in the House version of the 1980 appropriations bill and, therefore, by

implication, this second measure also conflicted with the continuing appropriations resolution which incorporated the House version. One of the reasons for the chosen wording of the second act (the one that was actually signed by the President) was uncertainty as to whether the conference report on the original 1980 appropriations bill would ever be enacted. Obviously, if
it were finally enacted, it would be the most recently enacted law, and thus,

under the mechanical rule, would prevail. The authors of the second bill wanted to avoid that consequence, and so they therefore worded their amendment to avoid that result.

When a lawsuit was brought, the District Court essentially held that the language of the second bill did not apply, and that the provisions of a still later continuing appropriations resolution (which also incorporated the House version of the still not-yet-enacted 1980 appropriations bill) did apply. That District Court decision was appealed to the District of Columbia Court of Appeals, which reversed the District Court based upon the historical relationship between the two primary bills at issue. The Court of Appeals noted that it was clear that Congress had worded the second bill in response to the possibility that the conference report on the first bill would ultimately be adopted, and that the provisions of the second bill were clearly intended to supercede the provisions of the first, even though the first might be the one enacted later in time. The Court rejected the argument that the second bill could not control future acts of the Congress, but very carefully limited its decision to the specific case. 684 F.2d 979 at 987.

While this description of the decision is, of necessity, greatly abbreviated, it is offered to support the proposition that a legislative body may, if it clearly expresses its intent either by explicit language in a statute or by legislative history, avoid a mechanical application of the rule prohibiting prospective repealers. In Connecticut, it was not the actual wording of the second statute which convinced the court; rather, it was the timing and sequence of events as explained by the legislative history which caused it to override the mechanical application of the rule.

The same rationale applies to the decisions reached above in the case of the Minnesota No-Fault Amendments contained in the 1985 Special Session bills. In both cases, the issues litigated were not the primary issues addressed by the bills in question. Instead, they were clearly secondary issues in the overall scheme of the bills.

The facts of the Minnesota situation are actually clearer than those of the federal situation in the Connecticut case. The adoption of the Revisor's "undoing" language into the Semi-States bill was obviously aimed at nullifying the pro-stacking amendment to the pending State Departments bill. By its own language, it has no effect on future legislatures and therefore does not come within the prohibitory scope of the rule against prospective repealers. The nullifing provision was not drafted in anticipation of unknown future amendments, but was drafted, voted on, and amended into the Semi-States conference committee report in direct response to a contradictory amendment in

another pending bill. In fact, the voiding language was added only because of the uncertainty of the order of passage between these bills, much like the circumstances in the Connecticut case.

A secondary argument which deserves some attention is the fact that the Revisor's language was a two-pronged effort. While most attention was directed to the "prospective repealer" at the end of his language, he did not "put all of his eggs" in that approach. Less obvious, but equally effective, was the first portion of the Revisor's language in the Semi-States bill, which repealed Minn. Stat. 65B.49, subd. 4, as amended during the regular session. That is the very subdivision which the State Departments bill was seeking to amend. Once Chapter 10 was signed by the Governor into

law, subdivision 4 of the statute ceased to exist. There no longer was any subd. 4 available for amendment. It was replaced by an identical subdivision (identical in terms of wording) that bore a different subdivision number, subdivision 3a. All courts hold that a repealed act cannot be amended. The effect of an amendment to a repealed act is to render that amendment a nullity. Therefore, even under a mechanical application of the "last enacted" rule, the attempted amendment in the State Departments bill had no effect, regardless of the validity of the so-called prospective repealer provision contained in the second part of the Revisor's "undoing" amendment.

C. Legislative Intent

It will be recalled from earlier portions of this memorandum that the two rules discussed above are considered but aids in interpreting legislative intent. But before those two rules are allowed to be superseded, it is critical that the intent of the legislature be clear.

Chapter 168 of the Regular Session (the Seaberg-Petty bill) dealt solely with the no-fault act. It was referred to substantive committees in both Houses, where it was debated and amended. It was passed on the floors of both Houses, where it was debated and amended. Indeed, the central issue under discussion here, the anti-stacking language, was partially eliminated by Senator Peterson's amendment on the floor of the Senate.

The legislative attention devoted to the issue of stacking which was focused on Chapter 168 during the Regular Session stands in stark contrast to the activities during the Special Session. The amendment to the State Departments conference committee report was made without consultation of the principal authors of Chapter 168. It was only through their efforts in getting a conflicting amendment into the Semi-States bill that the issue was discussed at all during the Special Session. Even then, it was not discussed by substantive committees or on the floor of either House. Both "riders" were minor items in a much more important effort to fund the ongoing operations of state government. The only place where the two conflicting stacking provisions were discussed was in the majority caucuses held prior to the special session.

Nevertheless, when conflicting laws are passed in this manner, arriving at a finding of clear legislative intent is a difficult task. When asked his opinion on the subject, Speaker Jennings called the amendments during the special session a "distortion of the legislative process" and expressed his view that a rider to a major appropriations bill cannot be viewed in the same context as a bill passed during the regular session which spoke directly to an issue. Tr. 206.

From the attached findings, I concur with the opinion of Speaker Jennings that the stacking issue was clearly addressed by the full legislature and, on the issue of whether insurers must offer policyholders the option to stack uninsured and underinsured motorists' coverages, the law as stated in Chapter 168 at the regular session, and restated in 68 of the Semi-States bill adopted in the special session, should apply.

The Revisor has reached the same conclusion. At the time of the administrative hearing, the Revisor was just in the process of compiling the statutes and amendments enacted during the 1985 Sessions for publication in

Minnesota Statutes 1985 Supplement. Attached to an authenticating affidavit and introduced into the record of the hearing (Ex. 26) are two pages of printer's positives proposed to be published in Minnesota Statutes 1985 Supplement. They show that the Revisor reached the same conclusion as does the Administrative Law Judge in this Report: There is anti-stacking language labelled as subdivision 3a of section 65B.49. There is no subdivision 4. A note indicates that subdivision 4 was repealed by the Semi-States bill.

D. Testimony of Legislators

It has been argued that the testimony of individual legislators is irrelevant in the interpretation of statutes. While this argument applies neatly to statements of a legislator who was not a major participant in a particular legislative act, statements by a legislator who was integrally involved with the enactment of a particular statute, such as those of a sponsor, are generally regarded as admissable. National Woodwork Manufacturers Association v. National Labor Relations Board, 386 U.S. 612, 87 S.Ct. 1250 (1967); National Association of Metal Finishers v. Environmental Protection Agency, 719 F.2d 624 (3rd Cir. 1983). Indeed, Minnesota courts have even looked to statements of lobbyists speaking before substantive committees in attempting to ascertain legislative intent. City of Chisago City v. Poulter, 342 N.W.2d 167 (Minn. App. 1984).

Testimony of legislators is sometimes crucial in ascertaining the contemporaneous legislative history (as required by Minn. Stat. 645.16 (7)), or shedding light on the circumstances under which the law was enacted (as required by Minn. Stat. 645.16 (2)). For these reasons and the reason that a clear understanding of the legislative activity with regard to these procedural issues would not be possible without it, the testimony of the legislators who testified at the hearing was admitted as necessary, relevant and proper.

All of the legislators -- indeed, all of the witnesses -- who testified were credible. Hardly any of the facts set forth in the Findings were disputed at all. It was only the interpretation to be accorded those facts that was at issue.

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SINGLE COVERAGE

On the second issue in this proceeding, whether uninsured motorist and underinsured motorist coverages should be provided as separate coverages or

one single coverage, it has been determined that the statute provides for both coverages to be combined into one for several reasons.

The primary reason is that language calling for a single policy appeared four times during the 1985 Regular and Special Sessions. At no time was this language changed, even when the State Departments conference committee report added the language changing the stacking provision. The language is uniform in each of the bills, and there is no clear legislative intent to do other than what the precise language requires.

In the absence of a "clearly expressed legislative intention to the contrary, [the] language [of the statute] must ordinarily be regarded as conclusive." Conneticut, infra., citing Consumer Products Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108, 100 S.Ct. 2051, 2056, 64 L.Ed.2d 766 (1980). See also, State v. Theo. Hamm Brewing Co., 78 N.W.2d 664 (Minn. 1956). The language in all four of the relevant bills plainly requires a single policy and "going behind the plain language of the statute in search of a possibly contrary . . . intent is a step to be taken cautiously even under the best circumstances." Conneticut, infra, at 990, citing American Tobacco Co. v. Patterson, U.S. 102 S.Ct. 1534, 1540, 71 L.Ed.2d 748 (1982).

Both the Department of Commerce and the Minnesota Trial Lawyers Association rely on references in the pertinent subdivisior of the No-Fault Law to "uninsured and underinsured coverages" as an evidencing an implicit intention for the policies to be separate. This argument ignores the fact that underinsured motorists' coverage was being mandated for the first time in Minnesota and was being written into the existing uninsured motorists' statutory provisions. It was for this reason that uninsured and underinsured motorists' coverages were gramatically structured as plural and additive.

If the legislature intended to require a separate coverage for underinsured motorists' coverage, it could have easily stated so. Surely, if separate coverages were intended, the final sentence, "For purposes of this subdivision, uninsured motorists coverage and underinsured motorist coverage shall be a single coverage" would have been eliminated or modified at some point in the process. To ignore the directive of this sentence and require separate policies would "do violence to the language of the statutes", Peterson v. Haule, 304 Minn. 160, 230 N.W.2d 51 (1975).

For these reasons, uninsured and underinsured motorist coverages should be offered in a single coverage.

A.W.K.